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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

13 JESUS COSICO LA GUARDIA
17292 Archie Moore Road
14 Ramona, CA 92065
Registered Nurse License No. 710953
15 Public Health Nurse License No. 72892

16 Respondent.

Case No. 2010-568

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about August 22, 2007, the Board of Registered Nursing issued Registered
24 Nurse License Number 710953 to Jesus Cosico La Guardia (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on September 30, 2011, unless renewed.
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3. On or about February 26, 2008, the Board of Registered Nursing issued Public Health Nurse Certificate Number 72892 to Jesus Cosico La Guardia (Respondent). The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2011.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on a license.

7. Section 2811(b) of the Code provides, in part, that each license not renewed shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee and upon submission of proof of the applicant's qualifications.

STATUTORY PROVISIONS

8. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

1 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
2 revoke a license on the ground that the licensee has been convicted of a crime substantially
3 related to the qualifications, functions, or duties of the business or profession for which the
4 license was issued.

5 10. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted by a
7 board within the department pursuant to law to deny an application for a license or
8 to suspend or revoke a license or otherwise take disciplinary action against a
9 person who holds a license, upon the ground that the applicant or the licensee has
10 been convicted of a crime substantially related to the qualifications, functions, and
11 duties of the licensee in question, the record of conviction of the crime shall be
12 conclusive evidence of the fact that the conviction occurred, but only of that fact,
13 and the board may inquire into the circumstances surrounding the commission of
14 the crime in order to fix the degree of discipline or to determine if the conviction is
15 substantially related to the qualifications, functions, and duties of the licensee in
16 question.

17 As used in this section, "license" includes "certificate," "permit,"
18 "authority," and "registration."

19 11. Section 2761 of the Code states:

20 The board may take disciplinary action against a certified or licensed nurse
21 or deny an application for a certificate or license for any of the following:

22 (a) Unprofessional conduct, which includes, but is not limited to, the
23 following:

24

25 (f) Conviction of a felony or of any offense substantially related to the
26 qualifications, functions, and duties of a registered nurse, in which event the record
27 of the conviction shall be conclusive evidence thereof.

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 12. Section 2762 of the Code states:

 In addition to other acts constituting unprofessional conduct within the
 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for
 a person licensed under this chapter to do any of the following:

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3 (b) Use any controlled substance as defined in Division 10 (commencing
4 with Section 11000) of the Health and Safety Code, or any dangerous drug or
5 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
6 or in a manner dangerous or injurious to himself or herself, any other person, or
7 the public or to the extent that such use impairs his or her ability to conduct with
8 safety to the public the practice authorized by his or her license.

9 (c) Be convicted of a criminal offense involving the prescription,
10 consumption, or self-administration of any of the substances described in
11 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
12 record pertaining to, the substances described in subdivision (a) of this section, in
13 which event the record of the conviction is conclusive evidence thereof.

14 REGULATORY PROVISIONS

15 13. California Code of Regulations, title 16, section 1444, states:

16 A conviction or act shall be considered to be substantially related to the
17 qualifications, functions or duties of a registered nurse if to a substantial degree it
18 evidences the present or potential unfitness of a registered nurse to practice in a
19 manner consistent with the public health, safety, or welfare. Such convictions or
20 acts shall include but not be limited to the following:

21 (a) Assaultive or abusive conduct including, but not limited to, those
22 violations listed in subdivision (d) of Penal Code Section 11160.

23 (b) Failure to comply with any mandatory reporting requirements.

24 (c) Theft, dishonesty, fraud, or deceit.

25 (d) Any conviction or act subject to an order of registration pursuant to
26 Section 290 of the Penal Code.

27 14. California Code of Regulations, title 16, section 1445 states:

28 (b) When considering the suspension or revocation of a license on the
grounds that a registered nurse has been convicted of a crime, the board, in
evaluating the rehabilitation of such person and his/her eligibility for a license will
consider the following criteria

(1) Nature and severity of the act(s) or offense(s).

1 (2) Total criminal record.

2 (3) The time that has elapsed since commission of the act(s) or offense(s).

3 (4) Whether the license has complied with any terms of parole, probation,
4 restitution or any other sanctions lawfully imposed against the licensee.

5 (5) If applicable, evidence of expungement proceedings pursuant to
6 Section 1203.4 of the Penal Code.

7 (6) Evidence, if any, of rehabilitation submitted by the licensee.

8 **COST RECOVERY**

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10 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licensee found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 **FIRST CAUSE FOR DISCIPLINE**

15 (April 16, 2009 Conviction for DUI on February 2, 2009)

16 16. Respondent is subject to disciplinary action under sections 490 and 2761(f) of the
17 Code in that he was convicted of a crime that is substantially related to the qualifications,
18 functions, and duties of a registered nurse. The circumstances are as follows:

19 a. On or about April 16, 2009, in a criminal proceeding entitled *People of the*
20 *State of California v. Jesus Cosico La Guardia*, in the San Diego Superior Court, case number
21 M073366, Respondent entered a plea of guilty to violation of Vehicle Code section 23152(b),
22 driving under the influence of alcohol while having a blood alcohol content of .08 percent or
23 more by weight. On his plea form, Respondent admitted to driving with a blood alcohol content
24 of .11 percent by weight.

25 b. The facts that led to the conviction were that on or about February 2, 2009,
26 officers from the San Diego Police Department responded to a radio dispatch reporting a vehicle
27 crash at Highland Valley Road within the city limits of San Diego, California. When the officers
28 arrived at the scene, they observed several adult males extinguishing a brush fire on the north side

1 of the road. The concerned citizens reported that they saw a bright flash in the sky and feared that
2 a transformer on a power pole had exploded so they rushed to the scene to put out the fire. The
3 officers were told that they saw headlights of a vehicle leaving the scene of the accident and
4 heading east bound on Highland Valley Road. Based on that information, the officer drove 100
5 feet until he encountered the fallen power pole which was lying across the road. Respondent was
6 standing on the north side of the road, approximately 50 feet east of the pole. One of the
7 concerned citizens yelled out that the vehicle was out in the brush about 100 feet off the road and
8 Respondent admitted that the vehicle was his.

9 c. When questioned by the officer, Respondent admitted that he was driving
10 around the curve on his way home when he lost control of his truck and hit the power pole. The
11 officer inspected the vehicle and observed that it was totaled. Respondent had dirt, twigs and
12 small pieces of broken glass all over his head and clothing. The officer observed that Respondent
13 acted lethargic, his face was lax and his eyelids drooped. Respondent's speech was slightly
14 slurred. Respondent admitted that he had three beers after work but blamed the crash on driving
15 too fast. The officer conducted field sobriety tests, which Respondent failed. Based on
16 Respondent's performance of the tests, he was arrested. Respondent's blood alcohol level was
17 measured at .11 percent and .10 percent by weight.

18 d. As a result of the conviction, Respondent was sentenced to summary
19 probation, ordered to pay all fines, fees, and restitution, and required to attend and complete the
20 First Conviction Program and MADD classes. Imposition of the sentence was stayed for 5 years.

21 SECOND CAUSE FOR DISCIPLINE

22 (Use of Alcohol in a Manner Dangerous to Self or Others)

23 17. Respondent is subject to disciplinary action under section 2762(b) of the Code in
24 that on or about February 2, 2009, Respondent used alcohol to an extent as to be dangerous to
25 himself or others, as set forth in paragraph 15, above, which is incorporated herein by reference.
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2 **THIRD CAUSE FOR DISCIPLINE**

3 (Unprofessional Conduct – Alcohol Related Conviction)

4 18. Respondent is subject to disciplinary action under 2762(c) of the Code in that on
5 or about April 16, 2009, Respondent was convicted of a criminal offense involving alcohol, as set
6 forth in paragraph 15 above, which is incorporated herein by reference.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

10 1. Revoking or suspending Registered Nurse License Number 710953, issued to Jesus
11 Cosico La Guardia.

12 2. Revoking or suspending Public Health Nurse Certificate Number 72892, issued to
13 Jesus Cosico La Guardia.

14 3. Ordering Jesus Cosico La Guardia to pay the Board of Registered Nursing the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3;

17 4. Taking such other and further action as deemed necessary and proper.
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20 DATED: 5/3/10

21 *Louise R. Bailey*
22 LOUISE R. BAILEY, M.ED., RN
23 Interim Executive Officer
24 Board of Registered Nursing
25 Department of Consumer Affairs
26 State of California
27 Complainant
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